

APPEAL NO. 021705
FILED AUGUST 21, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 13, 2002. The hearing officer determined that the respondent (claimant herein) was entitled to change treating doctors. The appellant (carrier herein) files a request for review contending that this determination was in error. The claimant responds that the decision of the hearing officer should be affirmed.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

Most of the facts of this case were not in dispute and the hearing officer summarizes the facts in his decision. We shall, therefore, only briefly set out the facts germane to the appeal. These include the fact the claimant initially treated for the shoulder component of her injury with Dr. A. When Dr. A left the clinic at which the claimant was being treated, Dr. L became the claimant's treating doctor. The claimant testified that when she would go to the clinic, she would be seen by doctors other than Dr. L and she was unable to meet with Dr. L to discuss her care.

The claimant filed an Employee's Request to Change Treating Doctors (TWCC-53) dated March 7, 2002, requesting to change treating doctors to Dr. M and giving the following as her reason for wanting to change treating doctors:

Dr./Patient relationship has been breached. I don't trust my doctor.

This request was denied by the Texas Workers Compensation Commission (Commission) with the notation that more information was needed. On March 22, 2002, the claimant met with Commission personnel to discuss her desire to change doctors and the carrier placed a computer record summarizing this meeting into evidence. On March 22, 2002, the claimant filed a second TWCC-53 requesting to change treating doctors to Dr. M and gave the following as her reason for the request:

I am not seeing the same doctor when I go for follow-ups. They are not communicating with me.

The claimant's second TWCC-53 was approved by the Commission on March 22, 2002.

The hearing officer made numerous factual findings, including that the claimant did not receive effective communication to understand the treatment regimen and how it was planned to achieve maximum medical improvement (MMI); that Dr. L's associate returned the claimant to work and the claimant in fact returned to work and remains in a

work status; that the claimant became dissatisfied with Dr. L's status as a treating doctor because of lack of communication and her belief she was not obtaining proper medical care to reach MMI; that the change of treating doctor's to Dr. M was made for a proper purpose—to obtain medical treatment to bring the claimant to MMI; and that the request to change treating doctors to Dr. M was not made for the purpose of obtaining a new medical report or rating. While there is some conflicting evidence regarding some of these findings, pursuant to Section 410.165(a) the hearing officer is the sole judge of the weight and credibility to be given to the evidence. We would only reverse the hearing officer's factual findings if they were so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). We do find this to be case, and, consequently, find that the hearing officer's factual findings are sufficiently supported by the evidence.

We do not find legal error. We have frequently noted that we review a decision of approval on change of treating doctors on an abuse-of-discretion standard. Texas Workers' Compensation Commission Appeal No. 970686, decided June 4, 1997, and cases cited therein. An abuse of discretion occurs where the decision maker acts without reference to any guiding rules and principals (Morrow v. H.E.B., Inc., 714 S.W.2d 297 (Tex. 1986)). That is clearly not the case here where the hearing officer properly applied Commission rules and advisories. See Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 126.9(e) (Rule 126.9(e)) and Advisory 2001-01, effective April 1, 2001.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**C T CORPORATION SYSTEM
350 NORTH ST. PAUL
DALLAS, TEXAS 75201.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Elaine M. Chaney
Appeals Judge